

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

DANNY RAY JOHNSON,

Petitioner

v.

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CIVIL ACTION NO. 1:10CV108  
CRIMINAL NO. 1:02CR50  
(Judge Keeley)

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On July 14, 2010, pro se petitioner, Danny Ray Johnson ("Johnson"), filed a petition pursuant to 28 U.S.C. § 2255. The Court referred this matter to United States Magistrate Judge Joel for initial screening and a report and recommendation in accordance with Local Rule of Prisoner Litigation 83.09.

On September 19, 2011, Magistrate Judge Joel issued an Opinion and Report and Recommendation ("R&R") recommending that Johnson's Motion to Vacate, Set Aside, or Correct Sentence be denied as moot. (Doc. No. 157, case No. 1:02CR50 & Doc. No. 21, case No. 1:10CV108). The R&R also specifically warned that failure to object to the recommendation would result in the waiver of any appellate rights on this issue. The parties did not file any objections.<sup>1</sup>

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<sup>1</sup> The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).

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**ORDER ADOPTING REPORT AND RECOMMENDATION**

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Consequently, the Court **ADOPTS** the Report and Recommendation in its entirety. Accordingly, the Court **DENIES AS MOOT** the motion to vacate (Doc. No. 157, case No. 1:02CR50 & Doc. No. 21, case No. 1:10CV108) and **ORDERS** the case **DISMISSED WITHOUT PREJUDICE** and stricken from the Court's docket.

Pursuant to Fed. R. Civ. P. 58, the Court directs the Clerk of Court to enter a separate judgment order and to transmit copies of both orders to counsel of record and to the pro se petitioner, certified mail, return receipt requested.

Dated: October 7, 2011.

/s/ Irene M. Keeley

IRENE M. KEELEY

UNITED STATES DISTRICT JUDGE